Supreme Court, U.S.
FILED
MAY 18 1992
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No. 91-1639

In the
UNITED STATES SUPREME COURT

OCTOBER TERM, 1991

Michael A. Nelson, Petitioner

v.

Office of Sam Nunn, Respondent

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Michael A. Nelson, Petitioner

v.

Office of Wyche Fowler, Respondent

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Michael A. Nelson, Petitioner

v.

Office of Richard Ray, Respondent

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

# REPLY BRIEF FOR PETITIONER

Respectfully submitted by:

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May 18, 1992

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# PETITIONER'S REPLY BRIEF

## ARGUMENTS

Petitioner, Michael A. Nelson hereby submits this Reply Brief to address the issues raised in the Respondents' Brief in Opposition. Respondents' Brief seeks the denial of Petitioner's Petition for Writ of Certiorari. Respondents base their request on the following contentions:

### CONTENTION I

Respondents contend that the Congress is exempt from definition of agency by the reason of 5 USCS 551(1)(A) and 552(f). Respondents Brief (Res. Brief) at 3-5.

While this Petitioner acknowledges that the Congress is exempt from the definition of "agency", for the purposes of the FOIA and the Privacy Act, (5 USCS 552, 552a) he states that such exemption is only by the reason of 551(1)(A). Section 552(f) of the Freedom of Information Act (FOIA) was

enacted to expand the scope of Section 551(1). By section 552(f) Congress intended to expand the definition of "agency" to include entities that may not have been considered agency under the section 551(1), Irwin Memorial Blood Bank v. American Nat. Red Cross, 640 F.2d 1501, 1503 (1981, CA9 Cal); See also H.R. Report No. 93-876 reprinted in 1974 U.S. Code Cong. & Admin. News 6267, 6274. Petitioner Brief (Pet. Brief) at 17-21). Congress remained unaffected by enactment of 5 USCS 552(f). This shows that the above contention of the Respondent is only partially correct.

CONTENTION II

Respondents contend that "there can be no serious doubt that offices of" the "Senators and Representatives are offices of the Congress". (Res. Petition at 5).

In deliberating such claim, Respondents have failed to provide any evidence which would prove that this claim is supported by

any rules or statutes of the United States or by any precedent court cases. This demonstrates that such contention of the Respondents in fact, is baseless. Moreover, such claim is contrary to provisions of 2 USCS 58(c) which defines these offices as agencies funded by the Congress. (Pet. Brief at 13-14).

CONTENTION III

Respondents state: "Petitioner's apparent view that the congressional exemption in the Freedom of Information Act applies only to auxiliary legislative branch agencies such as the Library of Congress,... but not to the Senate and the House themselves, Petition for Certiorari at 15-16, is refuted by common sense and by the precise text of the statute, which refers to "the Congress" 5 U.S.C. 551(1)(A), not auxiliary legislative agencies." (Res. Brief at 5).

Because of the following reasons

Petitioner states that this statement of the Respondents is fictitious and a distortion of Petitioner's views:

a. Nowhere in his Petition for Writ of Certiorari does the Petitioner refer to Library of the Congress as "Auxiliary legislative branch agencies". Such terminology is merely an invention of the Respondents. (See Pet. Brief at 15-16 for arguments regarding Library of the Congress).

b. Nowhere in his Petition does the Petitioner state that congressional exemption in the Freedom of Information Act does not apply to the Senate and the House of Representatives. Petitioner contended that congressional exemption in the FOIA does not apply to the OFFICES of Members of the Congress (Respondents).

CONTENTION IV

In an attempt to demonstrate that offices of Senators and Representatives are

exempt from definition of "agency" under the FOIA, Respondents improperly compare the offices of members of the Congress with the Chambers of the Justices of the Supreme Court of the United States. Following such comparison Respondents state that 551(1)(B) excludes from the FOIA's reach the records of the Justices and Judges of the federal courts. Based on such comparison Respondents further state: "Analogously, there is no reason to review the Eleventh Circuit's judgement.". (Res. Petition at 5).

This contention of the Respondents is improper. By such comparison and analogy Respondents simply claim that because the records of the justices and judges of the federal courts are outside of the reach of the FOIA, offices of members of the Congress are exempted from the requirements of the Act. This is a ridiculous contention and is completely lacking in merit. Petitioner's Petition seeks to determine whether offices

of the members of the Congress are "agency" under 5 USCS 552(1). Therefore, whether or not records of the Justices or judges of federal courts are beyond the reach of the FOIA, is irrelevant. Respondents have failed to produce any evidence which would support their claim and prove that based on the existing laws and/or precedents of this court they are excepted from the definition of "agency" under the Act. Instead, by improperly comparing themselves with the Chamber of the justices of this court and a baseless anology they have attempted to sustain their claim.

## CONCLUSION

Based on the above analysis, Petitioner states that Respondents, offices of Nunn, Fowler, and Ray have failed to present any valid argument in opposition to the issues and the contentions raised in the Petitioner's Petition for Writ of Certiorari. Therefore, Offices of Nunn,

Fowler, and Ray are "agency" as defined under 5 USCS 551(1). Because in defining "agency" section 551(f) of the FOIA cross-references section 551(1) and section 552a(a)(1) of the Privacy Act cross-references section 552(f) of the FOIA, these offices are accountable to the requirements of the FOIA and PA (5 USCS 552, 552a), and orders of the 11th Cir. affirming judgment of district court were improper. (App. at 1-12)

Wherefore, based on the reasons set forth above and in Petition for Writ of Certiorari, it is appropriate that the court grant Petitioner's Petition for Writ of Certiorari and review these actions for an exercise of court's power of supervision and settlement.

Respectfully submitted:

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